

ESTTA Tracking number: **ESTTA766540**

Filing date: **08/24/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	JTM Foods		
Entity	LLC	Citizenship	Pennsylvania
Address	2126 East 33rd Street Erie, PA 16510 UNITED STATES		

Attorney information	Jonathan D'Silva MMI Intellectual Property 900 State Street Suite 008 Erie, PA 16501 UNITED STATES jdsilva@mmiip.com Phone:814-459-6056
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Registration Subject to Cancellation

Registration No	4817400	Registration date	09/22/2015
Registrant	JJ BAKERY HOLDING, INC. 928 Ajax Avenue City of Industry, CA 91748 UNITED STATES		

Goods/Services Subject to Cancellation


Class 035. First Use: 1996/06/01 First Use In Commerce: 1996/06/01
All goods and services in the class are cancelled, namely: Retail bakery shops

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	4449090	Application Date	01/28/2013
Registration Date	12/10/2013	Foreign Priority Date	NONE
Word Mark	JJ'S BAKERY		

Design Mark	
Description of Mark	The mark consists of An outlined oval containing the letters "JJ's" at a 45 degree angle and the word "Bakery" underneath "JJ's". The letters "JJ" are in much larger font. There are also semi circles within the oval to the left and right of the words and under the top of the letters "J J".
Goods/Services	Class 030. First use: First Use: 2013/04/02 First Use In Commerce: 2013/04/02 fruit pies and snack foods, namely, barcookies containing crisped rice

U.S. Registration No.	1887335	Application Date	10/22/1993
Registration Date	04/04/1995	Foreign Priority Date	NONE
Word Mark	JJ'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1986/09/01 First Use In Commerce: 1986/09/01 bakery products; namely, snack cakes, snack pies, cupcakes, and sponge cake dessert shells		

U.S. Application No.	86803875	Application Date	10/29/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	JJ'S BAKERY DUOS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 0 First Use In Commerce: 0 prepared and packaged pies with a variety of fillings
Attachments	85834319#TMSN.png(bytes) 86803875#TMSN.png(bytes) Petition to Cancel J.J. BAKERY mark.pdf(158898 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jonathan M. D'Silva/
Name	Jonathan M. D'Silva
Date	08/24/2016

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No. 4,817,400
For the mark: J.J. BAKERY
Date Registered: September 22, 2015

Cancellation No. 4817400

JTM FOODS LLC,

Petitioner,

v.

JJ BAKERY HOLDING, INC.

Registrant.

PETITION FOR CANCELLATION

JTM FOODS LLC (“Petitioner”), a Pennsylvania Limited Liability Company having its principal place of business at 2126 East 33rd Street, Erie, Pennsylvania 16510, believes that it is damaged by Registration No. 4,817,400, and hereby petitions to cancel the same under the provisions of 15. U.S.C. §1064. As grounds for cancellation, Petitioner asserts that:


1. Petitioner is a family owned enterprise that has been in business since 1960 and prepares fully cooked, healthier, better-tasting foods with a focus on proprietary preparation, excellent service and customized culinary solutions. Petitioner also offers custom label and branded products for sale in most parts of the country.

2. Upon information and belief, JJ BAKERY HOLDING, INC is a Delaware Corporation with its principal place of business at 928 Ajax Avenue, City of Industry, California 91748 (the “Registrant”).

3. Upon information and belief, the name and address of the current attorney/correspondent for the Registrant is Kam Louie, Law Offices of Kam Louie, 301 N Lake Ave Ste 810, Pasadena, California 91101-4131.

4. On February 4, 2015, Registrant filed an application to register the mark J.J. BAKERY (as a standard character mark) under Section 1(a) of the Lanham Act, 15 U.S.C. §1051(a). On May 1, 2015, in response to a rejection from the Examining Attorney, Registrant amended its application to disclaim the term “BAKERY” apart from the mark. Based on this application, Registrant obtained U.S. Registration No. 4,817,400 (the “Registration”), which issued September 22, 2015 used for “retail bakery shops” in International Class 35.

5. Petitioner is the owner of the following U.S. trademark registrations and registration application in the USPTO (the “JTM marks”):

Trademark	Registration / Serial No.	Filing Date	Registration Date	Date of First Use	International Class/Goods
JJ'S	1,887,335	October 22, 1993	April 4, 1995	September 1, 1986	Int. Cl. 30 - bakery products; namely, snack cakes, snack pies, cupcakes, and sponge cake dessert shells.
JJ'S BAKERY 	4,449,090	January 28, 2013	December 10, 2013	April 2, 2013	Int. Cl. 30 - fruit pies and snack foods, namely, bar cookies containing crisped rice.
JJ'S BAKERY DUOS	86/803,875	October 29, 2015			Int. Cl. 30 - prepared and packaged pies with a variety of fillings

6. The JJ'S mark of the Petitioner has become incontestable as a matter of law under 15 U.S.C. §1065.

7. Since at least as early as September 1, 1986, Petitioner has been, and is now using the JJ'S mark in connection with its bakery products.

8. Since at least as early as April 2, 2013, Petitioner has been, and is now using the JJ'S BAKERY mark in connection with its fruit pie and snack foods products.

9. Petitioner's use of its registered trademarks has been valid and continuous since their first date of use.

10. Petitioner's use of its registered trademarks pre-date both Registrant's first use of, and application for registration of, the J.J. BAKERY mark, and establishes the priority of the Petitioner's JJ'S and JJ'S BAKERY marks.

11. Petitioner's use of its registered trademarks are symbolic of the extensive goodwill established by the Petitioner who has acquired a high degree of recognition through continued use and expenditure of time, effort, and money in advertising, promotion, and sales, and serves as a unique identifier of the goods offered by Petitioner.

12. Registrant's J.J. BAKERY mark is similar, if not essentially identical, to Petitioner's JJ'S and JJ'S BAKERY marks in that all marks have the common term JJ and the term BAKERY is common to two of the marks.

13. Registrant's J.J. BAKERY mark was cited by the USPTO as the basis for a Section 2(d) Refusal to register the Petitioner's application for registration of the JJ'S BAKERY DUOS mark on February 26, 2016. The Examining Attorney stated in his Office Action:

The use of similar marks on or in connection with both products and retail-store services has been held likely to cause confusion where the evidence showed that the retail-store services featured the same type of products. *See In re House Beer, LLC*, 114 USPQ2d 1073, 1078 (TTAB 2015) (holding the use of identical marks

for beer and for retail store services featuring beer likely to cause confusion); *In re Thomas*, 79 USPQ2d 1021, 1023 (TTAB 2006) (holding the use of similar marks for jewelry and for retail-jewelry and mineral-store services likely to cause confusion); *In re Peebles, Inc.*, 23 USPQ2d 1795, 1796 (TTAB 1992) (holding the use of nearly identical marks for coats and for retail outlets featuring camping and mountain climbing equipment, including coats, likely to cause confusion, noting that “there is no question that store services and the goods which may be sold in that store are related goods and services for the purpose of determining likelihood of confusion”); TMEP §1207.01(a)(ii).

Here the registrant’s services are likely to cause to confusion with the applicant’s goods, as the registrant retail stores feature the same type of products, namely, bakery goods.

It is likely that the purchasers would believe, mistakenly, that the goods/services come from a common source. Overall, the similarities among the marks and the goods/services of the parties are so great as to create a likelihood of confusion. The mark, “JJ’S BAKERY DUOS”, must therefore be refused.

14. Based on the assertions of the USPTO Examining Attorney, and the Petitioner’s inability to now register its own marks, Petitioner asserts that the goods of the Petitioner and the services of the Registrant are likely to cause confusion in purchasers.

COUNT I – LIKELIHOOD OF CONFUSION

15. Petitioner hereby incorporates by reference and realleges each and every allegation set forth in Paragraphs 1 through 14.

16. Petitioner’s dates of its JJ’S and JJ’S BAKERY registered trademarks are prior to the date of filing of Registrant’s J.J. BAKERY mark and the date of Registrant’s claimed date of first use.

17. The Petitioner’s JJ’S and JJ’S BAKERY registered trademarks are valid and subsisting and are *prima facie* evidence of Petitioner’s exclusive right to use the JJ’S and JJ’S BAKERY marks in commerce of the goods specified in such registrations.

18. In view of the similarity of the respective marks, the use of similar marks on or in connection with both products and retail-store services where the retail-store services feature the

same type of products, the likelihood of confusion as to the source of goods and services offered for sale by the respective parties, Registrant's J.J. BAKERY mark so resembles Petitioner's JJ'S and JJ'S BAKERY registered marks previously used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive as to source by suggesting the Registrant's services are associated with, or approved, endorsed, affiliated, authorized, or sponsored by Petitioner.

WHEREFORE, JJ BAKERY HOLDING, INC's J. J. BAKER Mark, Registration No. 4,817,400, is damaging to JTM Foods LLC, Petitioner request that the instant Petition for Cancellation be granted and the aforesaid registration be cancelled.

Date: August 24, 2016

Respectfully Submitted,

/Jonathan M. D'Silva/

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Attorney for Petitioner
JTM Foods LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition for Cancellation has been served on JJ BAKERY HOLDING, INC. by mailing said copy on August 24, 2016 via First Class Mail, postage prepaid to:

Kam Louie
Law Offices of Kam Louie
301 N Lake Ave Ste 810
Pasadena, California 91101-4131

/Jonathan M. D'Silva/

Jonathan M. D'Silva
Attorney for Petitioner
JTM Foods LLC